

HOUSE BILL 141

By Lamberth

AN ACT to amend Tennessee Code Annotated, Section 67-4-2109 and Title 67, Chapter 6, Part 3, relative to tax benefits for qualified productions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following as a new section:

(a) For purposes of this section:

(1) "Applicant" means a person applying for an exemption under this section;

(2) "Best interests of the state" means a determination by the commissioners of revenue and economic and community development that the qualified production is a result of the exemption provided in this section and the benefits to the state resulting from the production outweigh the anticipated costs. In making this determination, the commissioners may consider the investment made, jobs created, impact to the community, and any other matters deemed appropriate by the commissioners;

(3) "Commission" means the Tennessee film, entertainment and music commission, created by § 4-3-5003;

(4) "Esports" means leagues, competitive circuits, tournaments, or similar competitions where individuals or teams play video games, typically for spectators, either in-person or online, for the purpose of ranking, prizes, money, or entertainment; and

(5) "Qualified production" means any of the following activities, as determined by the commission:

(A) The production of a film, pilot episode, series, esports event, or other episodic content in this state;

(B) The creation of computer-generated imagery, video games, or interactive digital media in this state; or

(C) Stand-alone audio or visual post-production scoring and editing in this state.

(b) The sale, use, storage, or consumption of tangible personal property, computer software, or services that are necessary to and primarily used for a qualified production are exempt from the tax imposed by this chapter, if the commissioner of revenue and the commissioner of economic and community development determine under the process set forth in subsection (c), in their sole discretion and in writing, that such an exemption is in the best interests of the state.

(c) Eligibility for the exemption set forth in subsection (b) is determined as follows:

(1) An applicant must apply to the commission, on a form prescribed by the commission, describing the basis for seeking an exemption under subsection (b), including the nature of the production activities involved;

(2) If the commission determines that the applicant is engaging in a qualified production, then the commission shall notify the applicant and the department of revenue of that determination, and the applicant may apply to the department of revenue for the exemption under subsection (b) on a form prescribed by the department of revenue;

(3) The department of revenue shall not approve an application for the exemption under subsection (b) unless the commissioner of revenue and the commissioner of economic and community development each determine, in their sole discretion and in writing, that approving the exemption is in the best interests of the state.

(d) If the exemption is approved by the department of revenue, then the department of revenue shall issue a sales and use tax exemption certificate to the applicant that identifies the qualified production.

(e) A third party purchasing or using tangible personal property, computer software, or services that are necessary to and primarily used for a qualified production that is granted an exemption may separately apply to the department of revenue, on a form prescribed by the department of revenue, to use the exemption to make purchases on a tax-exempt basis for the identified qualified production. If the third party is approved by the department of revenue, then the department of revenue shall issue a sales and use tax exemption certificate to the third party that identifies the qualified production.

(f) An exemption certificate issued pursuant to this section expires two (2) years from its effective date. The person to whom the exemption certificate is granted may apply for renewals of the exemption certificate through the process described in subsections (c) and (e). For each renewal application granted, the department of revenue shall issue to the applicant a sales and use tax exemption certificate that expires two (2) years from its effective date.

SECTION 2. Tennessee Code Annotated, Section 67-4-2109, is amended by deleting subsection (j) and substituting instead the following:

(1) For purposes of this subsection (j):

(A) "Applicant" means a person applying for a credit under this subsection (j);

(B) "Best interests of the state" means a determination by the commissioners of revenue and economic and community development that the qualified production is a result of the credit provided in this subsection (j) and the benefits to the state resulting from the production outweigh the anticipated costs. In making this determination, the commissioners may consider the investment made, jobs created, impact to the community, and any other matters deemed appropriate by the commissioners;

(C) "Commission" means the Tennessee film, entertainment and music commission, created by § 4-3-5003;

(D) "Esports" means leagues, competitive circuits, tournaments, or similar competitions where individuals or teams play video games, typically for spectators, either in-person or online, for the purpose of ranking, prizes, money, or entertainment;

(E) "Qualified payroll expenses" means compensation paid in this state, as determined pursuant to § 67-4-2111(f), for qualified positions during the applicable tax period, subject to programmatic caps established by the commission;

(F) "Qualified position" means services performed by an employee or an independent contractor determined by the commission to be necessary to and primarily for a qualified production; and

(G) "Qualified production":

(i) Means any of the following activities, as determined by the commission:

(a) The production of a film, pilot episode, series, esports event, or other episodic content in this state;

(b) The creation of computer-generated imagery, video games, or interactive digital media in this state; or

(c) Stand-alone audio or visual post-production scoring and editing in this state; and

(ii) Includes activities by a third party that are necessary to and performed on behalf of a person engaging in the activities covered by subdivision (j)(1)(G)(i).

(2)

(A) If the commissioner of revenue and the commissioner of economic and community development determine under the process set forth in subdivision (j)(3), in their sole discretion and in writing, that it is in the best interests of the state, a credit for qualified payroll expenses in the amounts specified in subdivision (j)(2)(B) is allowed against an applicant's combined franchise and excise tax liability. The total credit taken on any franchise and excise tax return, including any credit carried forward from prior tax periods, shall not exceed fifty percent (50%) of the combined franchise and excise tax liability shown on the return before any credit is taken. Any unused credit allowed under this subsection (j) may be carried forward in any tax period until the credit is taken; provided, however, that the credit shall not be carried forward for more than fifteen (15) years.

(B) The amount of the credit for qualified payroll expenses allowed under subdivision (j)(2)(A) is forty percent (40%) of qualified payroll expenses, except in the case of qualified payroll expenses paid to individuals whose primary

residence is in a tier 2, tier 3, or tier 4 enhancement county, for which the credit is fifty percent (50%) of qualified payroll expenses.

(3) Eligibility for the credit set forth in this subsection (j) is determined as follows:

(A) An applicant must apply to the commission, on a form prescribed by the commission, describing the basis for seeking a credit under this subsection (j), including the nature of the production activities involved and number of employment positions that the applicant estimates to be deemed qualified positions;

(B) If the commission determines that the applicant is engaging in a qualified production, then the commission shall notify the applicant and the department of revenue of that determination, and the applicant may apply to the department of revenue for the credit under this subsection (j) on a form prescribed by the department of revenue;

(C) The department of revenue shall not approve an application for the credit under this subsection (j) unless the commissioner of revenue and the commissioner of economic and community development each determine, in their sole discretion and in writing, that approving the application is in the best interests of the state.

(4) If the application is approved by the department of revenue in accordance with subdivision (j)(3)(B), then the applicant shall claim the credit under this subsection (j) in a manner prescribed by the department of revenue.

(5)

(A) Subject to the approval of the department of revenue, an applicant may file a combined return with one (1) or more affiliates or affiliated group members for purposes of fully utilizing this credit. The request to file a combined

return must be included in the applicant's application for the credit under subdivision (j)(3)(B) and is subject to the approval of the department of revenue.

(B) Once an application to file a combined return is granted, an applicant may apply to add or change affiliates or affiliated group members included in the combined return prior to filing the first combined return on which the credit is claimed. If the addition or change is approved pursuant to subdivision (j)(5)(C), then the members included on the combined return must remain unchanged for a minimum of three (3) years, beginning with the first tax year in which the credit is claimed on a combined return. Each member included on the combined return must close its taxable year on the same date, except that an affiliate included in the group may exit the group during the taxable year due to a change in ownership, merger, or liquidation of the member, in which case the member exiting the group must be excluded from the group and must compute its net earnings as otherwise provided in part 20 of this chapter and its net worth as otherwise provided in this part.

(C) A request to file a combined return, or to add or change affiliates or affiliated group members included in a combined return, shall not be approved unless the commissioner of revenue and the commissioner of economic and community development each determine, in their sole discretion and in writing, that approving the request is in the best interests of the state.

(6) This subsection (j) is subject to the reporting requirements of subsection (r) and § 67-1-118.

SECTION 3. Section 1 of this act takes effect July 1, 2021, the public welfare requiring it. Section 2 of this act takes effect July 1, 2021, the public welfare requiring it, and applies to tax years beginning on or after that date.